



Additionally, the Tax Division does not object to the Plaintiff's requests for relief or foreclosure of the property as set forth in the Complaint, except as to this Honorable Court granting such additional and equitable relief as this Court deems just and appropriate to the extent such relief is in addition to the requests for relief and foreclosure as specifically included in the Complaint.

### **AFFIRMATIVE DEFENSES**

As this Honorable Court is aware, the U.S. District Court is without subject matter jurisdiction over state tax matters and the exhaustion of administrative remedies is an essential prerequisite for judicial review of any state tax matter. R.I. Gen. Laws §§ 8-8-3(a)(6) and 8-8-24. *Owner-Operators Independent Drivers Ass'n v. State*, 541 A.2d 69 (R.I. 1988); *International Packaging Corp. v. Mayer*, 715 A.2d 636 (R.I. 1998). If the within action is limited to determining the extent or priority of the parties' claims, the Tax Division is without jurisdictional and procedural objection. However, if the subsequent proceedings entail a collateral attack upon the validity of a state tax liability or the propriety of the state tax lien arising therefrom, the gravamen of this action would result in a state tax dispute. Under these circumstances, and out of an abundance of caution, the Tax Division preserves its rights by raising the following affirmative defenses:

#### ***First Affirmative Defense***

The court lacks subject matter jurisdiction. FRCP 12(b)(1).

#### ***Second Affirmative Defense***

Plaintiff fails to state a claim upon which relief can be granted. FRCP 12(b)(6).

#### ***Third Affirmative Defense***

The Division reserves the right to assert additional affirmative defenses as discovery reveals appropriate.

WHEREFORE, the Tax Division agrees to judgment for the Plaintiff to the extent as set forth in this Answer and with each party to bear its own costs and/or attorney's fees.

Respectfully submitted,

STATE OF RHODE ISLAND  
DIVISION OF TAXATION,

By its Attorney,

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